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U. S. DISTRICT COURT OF ARKANSAS  
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SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1943

No. 311

MURRAY B. MCLEOD, COMMISSIONER OF REVENUES OF  
THE STATE OF ARKANSAS,

*Petitioner,*

vs.

J. E. DILWORTH COMPANY AND REICHMAN-CROSBY  
COMPANY.

No. 312

MURRAY B. MCLEOD, COMMISSIONER OF REVENUES OF  
THE STATE OF ARKANSAS,

*Petitioner,*

vs.

BINSWANGER AND COMPANY.

PETITIONS FOR WRITS OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS AND BRIEF IN  
SUPPORT THEREOF.

LEFFEL GENTRY,  
*Counsel for Petitioner.*



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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 311

MURRAY B. McLEOD, COMMISSIONER OF REVENUES OF  
THE STATE OF ARKANSAS,

*vs.* Petitioner,

J. E. DILWORTH COMPANY AND REICHMAN-CROSBY  
COMPANY.

PETITIONS FOR WRITS OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS.

To the Honorable Harlan F. Stone, Chief Justice, and the  
Honorable Associate Justices, of the Supreme Court of  
the United States:

The petitioner, Commissioner of Revenues of the State of Arkansas, respectfully petitions that a Writ of Certiorari be issued in this cause to the Supreme Court of Arkansas, and in support thereof respectfully submits the following matters:

Statement of the Case.

The Commissioner of Revenues of the State of Arkansas brought separate suits against J. E. Dilworth Company and

Reichman-Crosby Company of Memphis, Tennessee, to require them to collect and pay to the Commissioner of Revenues the sales tax levied by Act 154 of the Acts of the General Assembly of Arkansas for the year 1937, as amended, and similarly to collect and pay the sales or gross receipts tax levied by Act 386 of the Acts of the General Assembly of Arkansas for the year 1941 (which latter act repealed Act 154 of 1937 as amended (R. 1-4, 12-15). The cases were consolidated for trial (R. 20-21).

According to the facts admitted by way of answer or by stipulation: Each of the defendants (in the separate cases) are foreign corporations, not qualified to do business in Arkansas and having no place of business here. Orders for merchandise are taken by traveling salesmen from customers in Arkansas, subject to acceptance by the company at Memphis, and orders are received by mail and telephone at Memphis from customers in Arkansas. When these orders are accepted the merchandise is shipped by common carrier direct to the purchaser in Arkansas, f. o. b. Memphis, purchaser paying the freight (R. 7-9; 9-11; 15-18).

The tax sought to be collected is two per cent (2%) of the proceeds derived by the defendants from sales to purchasers in Arkansas where delivery was finally made to the purchasers in Arkansas (R. 1-4, 12-15).

The regulations of the Commissioner of Revenues providing for the collection of the tax under each of the pertinent acts are set forth at length in the appendix to the brief in support of this petition.

The defense of each of the parties was as follows:

(1) The regulation of the Commissioner of Revenues of Arkansas providing for the collection of the tax was beyond the scope and intent of either of the acts under which the taxes were sought to be collected, and therefore the regulation was invalid and the Commissioner of Revenues was

without authority under either of said acts to collect the taxes on transactions of the sort involved.

(2) The collection of the tax was a violation of the Constitution of the State of Arkansas.

(3) The collection of the tax was a violation of the Commerce Clause and the Due Process Clause of the Constitution of the United States (R. 7-9; 15-18).

Upon trial of these causes in the lower court, a decree was rendered dismissing the complaints of the Commissioner of Revenues in each of the cases (R. 11-12; 19).

Upon appeal of the causes to the Supreme Court of Arkansas, the decision of the lower court was affirmed and petition for rehearing denied (R. 22; 31). The decision was predicated upon the conclusion of the court, stated in its opinion, that a sales tax could not be levied upon transactions of the sort here involved because it would be a burden on interstate commerce and therefore in violation of the Commerce Clause of the Constitution of the United States (R. 22-28). It is this conclusion which the petitioner seeks to have reviewed by this Honorable Court.

#### **Statement of Basis of Jurisdiction of This Court.**

The statutory provision which it is believed sustains the jurisdiction of this Court is Sec. 240 of the Judicial Code (28 U. S. C. A., Sec. 347).

The date of the decree to be reviewed is May 31, 1943 (date Petition for Rehearing was denied) (R. 31); and the opinion of the Supreme Court of Arkansas is attached to the printed record to be furnished with this application for Writ of Certiorari (R. 22-28).

#### **Statement of Question Presented.**

The sole question presented in these cases is whether the collection of the tax, levied by Act 154 of the Acts of the

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General Assembly of Arkansas for the year 1937 and the tax levied by Act 386 of the Acts of the General Assembly of Arkansas for the year 1941, under the facts presented in these cases, is a burden on interstate commerce and therefore prohibited by the Commerce Clause of the Constitution of the United States.

**Statement of Reasons Relied On for Allowance of the Writ.**

I.

The decision of the Supreme Court of Arkansas is upon an important question of Federal law which has not been *directly* passed upon by this Court. The question is frequently presented in the administration by the Commissioner of Revenues of Arkansas of the tax acts under consideration and is similarly presented in the administration of similar acts in numerous states where sales tax laws have been enacted.

II.

The decision of the Supreme Court of Arkansas is in conflict with principles established by prior decisions of this Court.

WHEREFORE, it is respectfully prayed that the Writ of Certiorari be granted.

LEFFEL GENTRY,  
*Counsel for Petitioner,*  
Boyle Bldg.,  
Little Rock, Arkansas.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

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No. 312

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MURRAY B. McLEOD, COMMISSIONER OF REVENUES OF  
THE STATE OF ARKANSAS,  
*v.*  
*Petitioner.*

BINSWANGER AND COMPANY.

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**PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF ARKANSAS.**

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To the Honorable Harlan F. Stone, Chief Justice, and the  
Honorable Associate Justices, of the Supreme Court of  
the United States:

The petitioner, Commissioner of Revenues of the State  
of Arkansas, respectfully petitions that a Writ of Cer-  
tiorari be issued in this cause to the Supreme Court of  
Arkansas, and in support thereof respectfully submits the  
following matters:

**Statement of the Case.**

This case was tried, upon order of consolidation, with  
the cases of *Commissioner of Revenues of Arkansas v.  
J. E. Dilworth Company*, and *Commissioner of Revenues*

*of Arkansas v. Reichman-Crosby Company*, in which application for Writ of Certiorari has also been filed. The facts are the same as in those cases with the exception that in this case the merchandise sold, in some instances, was delivered to the purchasers in Arkansas in trucks owned and operated by Binswanger and Company (R. 33, 35). The Supreme Court of Arkansas rendered a separate opinion in this case, and therefore, a separate record of this case was filed in this Court. However, as to all sales transactions except those of the kind just mentioned, the decision of the Supreme Court of Arkansas affirmed the decree of the lower court holding that the taxes could not be collected because it would burden interstate commerce and therefore violate the commerce clause of the United States Constitution (R. 40); and this review of that part of the decision, to the same effect as the decision in the other cases mentioned, is likewise sought.

The basis of this Court's jurisdiction, the question presented, the reasons relied on for the granting of the writ, and the argument and authorities in support of the petition are identical with those matters set forth in the petition and brief also filed in the other cases mentioned and to again set these forth in this petition would be needless repetition.

WHEREFORE, it is respectfully prayed that the Writ of Certiorari be granted.

LEFFEL GENTRY,  
*Counsel for Petitioner,*  
Boyle Bldg.,  
Little Rock, Arkansas.

**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1943**

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**No. 311**

MURRAY B. McLEOD, COMMISSIONER OF REVENUES OF THE  
STATE OF ARKANSAS,

*vs.* *Petitioner,*

J. E. DILWORTH COMPANY AND REICHMAN-  
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**No. 312**

MURRAY B. McLEOD, COMMISSIONER OF REVENUES OF THE  
STATE OF ARKANSAS,

*vs.* *Petitioner,*

BINSWANGER AND COMPANY.

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**BRIEF IN SUPPORT OF PETITIONS FOR  
CERTIORARI.**

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**Statement.**

A full statement of the case is contained in the petitions for Certiorari, and therefore need not be repeated in this brief.

## Summary of Argument.

### I.

The Supreme Court of Arkansas, in its opinions, held that the collection of the taxes from the respondents would be a burden on interstate commerce and therefore was prohibited by the Commerce Clause of the Constitution of the United States.

### II.

Collection of the taxes does not burden interstate commerce.

- (a) A non-discriminatory tax may be levied on interstate commerce transactions.
- (b) The tax is conditioned upon a local activity, delivery of goods within the state upon their purchase for consumption.
- (c) Jurisdiction of the sellers is not a question in issue.

## **ARGUMENT.**

### I.

#### **The Supreme Court of Arkansas Held That the Collection of the Taxes Would Burden Interstate Commerce.**

In its opinion in these causes (m. op. Apr. 26, 1943), the Supreme Court of Arkansas held that the collection of the tax was prohibited by the Commerce Clause of the United States Constitution and in so holding relied upon its decision in the case of *Mann v. McCarroll*, 198 Ark. 628, 139 S. W. (2d) 721. In referring to the decision in that case, the court, in its opinion, said:

“The court thus held the tax was a sales tax and void under the Commerce Clause of the Constitution

of the United States insofar as the transactions therein were concerned.

"The facts in the cases at bar are substantially the same—so far as the interstate commerce characteristics—as in *Mann v. McCarroll*, therefore we now hold that the transactions here involved occurring under Act 154 of 1937, and prior to the effective date of Act 386 of 1941, are directly ruled by *Mann v. McCarroll*, and therefore not subject to the tax." (m. op. Apr. 26, 1943; *Murray B. McLeod, Commissioner of Revenues of the State of Arkansas, v. J. E. Dilworth Company, and Murray B. McLeod, Commissioner of Revenues of the State of Arkansas, v. Reichman-Crosby Company*).

The court also stated in its opinion that the type of tax involved under Act 386 of 1941 was the same as the type of tax involved under Act 154 of 1937, as amended, and that the collection of the tax under that act was likewise prohibited by the Commerce Clause of the United States Constitution (m. op. Apr. 26, 1943; *Murray B. McLeod, Commissioner of Revenues of the State of Arkansas, v. J. E. Dilworth Company, and Murray B. McLeod, Commissioner of Revenues of the State of Arkansas, v. Reichman-Crosby Company*). The court concluded its opinion as follows:

"To conclude, we hold herein: (1) That the tax here involved is a sales tax; (2) that as a sales tax, it would be a burden on interstate commerce for the tax to be imposed and collected under the facts in these cases."

## II.

### **Collection of the Taxes Does Not Burden Interstate Commerce.**

The court, in its opinion, relied upon the case of *Crenshaw v. Arkansas*, 227 U. S. 389, 57 L. Ed. 565, 33 S. Ct. 294, to support its conclusion that the collection of the taxes would be a burden on interstate commerce and refused to

follow the decisions of this Court in the following cases: *McGoldrick v. Berwind-White Coal Mining Company*, 309 U. S. 33, 84 L. Ed. 565, 60 S. Ct. 388; *McGoldrick v. Felt & Tarrant Mfg. Co.*; *McGoldrick v. A. H. DuGrenier, Inc.*, 309 U. S. 70; *Jagels, a fuel corporation, Petitioner, v. Taylor, Respondent*, 309 U. S. 619.

The tax involved in these cases is not a privilege or occupation tax. *Wiseman v. Phillips*, 191 Ark. 63; *Arkansas Power & Light Co. v. Roth*, 193 Ark. 1015 (See also the opinion in these cases sought to be reviewed). Therefore the *Crenshaw* case, which involved an occupation tax, is not an authority for the court's conclusion that the collection of the taxes in these cases would be a burden on interstate commerce.

(a) **A NON-DISCRIMINATORY TAX MAY BE LEVIED ON INTERSTATE COMMERCE TRANSACTIONS.**

In the case of *Illinois Natural Gas Co. v. Central Illinois Public Service Co.*, decided January 5, 1942, Vol. 86, No. 5, Adv. Op. 322, this Court said (P. 325):

"And, similarly, this Court has sustained a non-discriminatory tax on the sale to a buyer within the taxing state of a commodity shipped interstate in performance of the sales contract, not upon the ground that the delivery was not a part of interstate commerce, but because the tax was not a prohibited regulation of or burden on that commerce. *Wilco Corp. v. Pennsylvania*, 294 U. S. 169, 79 L. Ed. 838, 55 S. Ct. 358; *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 50, 84 L. Ed. 565, 572, 60 S. Ct. 388, 128 A. L. R. 876."

In the case of *McGoldrick v. Berwind-White Coal Mining Company*, cited *supra*, the decision of this Court sustaining the collection of the taxes rested fundamentally upon the proposition that a non-discriminatory tax might be levied on interstate commerce transactions.

"If, as guides to decision we look to the purpose of the commerce clause to protect interstate commerce

from discriminatory or destructive state action, and at the same time to the purpose of the state taxing power under which interstate commerce admittedly must bear its fair share of state tax burdens, and to the necessity of judicial reconciliation of these competing demands, we can find no adequate ground for saying that the present tax is a regulation which, in the absence of congressional action the commerce clause forbids. This Court has uniformly sustained a tax imposed by the state of the buyer upon a sale of goods, in several instances in the 'original package' effected by delivery to the purchaser upon arrival at destination after an interstate journey, both when the local seller has purchased the goods extra-state for the purpose of resale. *Woodruff v. Parham*, 8 Wall. (U. S.) 148, 19 L. Ed. 387; *Banker Bros. Co. v. Pennsylvania*, 222 U. S. 210, 56 L. Ed. 168, 32 S. Ct. 38, *supra*; *Wiloil Corp. v. Pennsylvania*, 294 U. S. 169, 79 L. Ed. 838, 55 S. Ct. 358, *supra*; *Graybar Electric Co. v. Curry*, 308 U. S. 513, ante, 437, 60 S. Ct. 139 (238 Ala. 116, 189 So. 186) November 6, 1939, and when the extra-state seller has shipped them into the taxing state for sale there, *Hinson v. Lott*, 8 Wall. (U. S.) 148, 19 L. Ed. 387, *supra*; *Sonneborn Bros. v. Cureton (Sonneborn Bros. v. Kelling)* 262 U. S. 506, 67 L. Ed. 1095, 43 S. Ct. 643. It has likewise sustained a fixed-sum license tax imposed on the agent of the interstate seller for the privilege of selling merchandise brought into the taxing state for the purpose of sale. *Howe Mach. &c. v. Gage*, 100 U. S. 676, 25 L. Ed. 754; *Emert v. Missouri*, 156 U. S. 296, 39 L. Ed. 430, 15 S. Ct. 367, 5 Inters. Com. Rep. 68; *Kehrer v. Stewart*, 197 U. S. 60, 49 L. Ed. 663, 25 S. Ct. 403; *Baccus v. Louisiana*, 232 U. S. 334, 58 L. Ed. 627, 34 S. Ct. 439; *Wagner v. Covington*, 251 U. S. 95, 64 L. Ed. 157, 40 S. Ct. 93.

"The only challenge made to these controlling authorities is by reference to unconstitutional 'burdens' on interstate commerce made in general statements which are inapplicable here because they are torn from their setting in judicial opinions and speak

of state regulations or taxes of a different kind laid in different circumstances from those with which we are now concerned. See for example, *Galveston, H. & S. A. R. Co. v. Texas*, 210 U. S. 217, 52 L. Ed. 1031, 28 S. Ct. 638, *supra*; *Cooney v. Mountain States Teleph. & Teleg. Co.*, 294 U. S. 384, 79 L. Ed. 934, 55 S. Ct. 477; *Fisher's Blend Station v. Tax Commission*, 297 U. S. 650, 80 L. Ed. 956, 56 S. Ct. 608. Others will presently be discussed. But unless we are now to reject the plain teaching of this line of sales tax decisions, extending back for more than seventy years from *Graybar Electric Co. v. Curry*, 308 U. S. 513, ante, 437, 60 S. Ct. 139, *supra*, decided this term, to *Woodruff v. Parham*, 8 Wall. (U. S.) 123, 19 L. Ed. 382, *supra*, the present tax must be upheld. As we have seen, the ruling of these decisions does not rest on precedent alone. It has the support or reason and of a due regard for the just balance between national and state power. In sustaining these taxes on sales emphasis was placed on the circumstances that they were not so laid, measured or conditioned as to afford a means of obstruction to the commerce or of discrimination against it, and that the extension of the immunity of the commerce clause contended for would be at the expense of state taxing power by withholding from taxation property and transactions within the state without the gain of any needed protection to interstate commerce. *Woodruff v. Parham*, *supra*, (8 Wall. (U. S.) 137, 140, 19 L. Ed. 386, 387); *Hinson v. Lott*, *supra* (8 Wall. (U. S.) 152 L. Ed. 388); *Sonneborn Bros. v. Cureton* (*Sonneborn Bros. v. Keeling*) *supra* (262 U. S. 513, 514, 521, 67 L. Ed. 1099, 1100, 1102, 43 S. Ct. 643); *Wiloil Corp. v. Pennsylvania*, *supra* (294 U. S. 174, 79 L. Ed. 840, 55 S. Ct. 358); cf. *Brown v. Houston*, 114 U. S. 622, 29 L. Ed. 257, 5 S. Ct. 1091, *supra*; *Henneford v. Silas Mason Co.*, *supra*, (300 U. S. 583, 81 L. Ed. 819, 57 S. Ct. 524)."

*McGoldrick v. Berwind-White Coal Mining Company*, 309 U. S. 33, 84 L. Ed. 565, 60 S. C. 388, 128 A. L. R. 876.

The tax is not laid on the seller, but the seller acts only as the collecting agent, and insofar as concerns the question of whether the requirement that the seller collect the tax is an interference or burden on interstate commerce it makes no difference whether the tax required to be collected is a sales or a use tax, and this Court held in the case of *Felt & Tarrant Mfg. Co. v. Gallagher*, 306 U. S. 62, that it was not a burden on interstate commerce to require an out of state seller to collect a use tax.

There is no discrimination against the sellers in these cases, as all sellers are required to collect the tax, subject only to the jurisdiction which the state may have obtained over the seller to enforce the requirements. The jurisdiction over these sellers will be discussed under sub-section (c) of this title of the argument.

**(b) THE TAX IS CONDITIONED UPON A LOCAL ACTIVITY, DELIVERY OF GOODS WITHIN THE STATE UPON THEIR PURCHASE FOR CONSUMPTION.**

In the case of *McGoldrick v. Berwind White Coal Mining Company*, cited *supra*, aside from its holding that a non-discriminatory tax might be levied on interstate commerce transactions, this Court, in its opinion, also held that under the facts there involved the tax was not laid upon interstate commerce transactions. The court said (P. 52):

“Apart from these more fundamental considerations which we think are of controlling force in the application of the commerce clause, we can find no adequate basis for distinguishing the present tax laid on the sale or purchase of goods upon their arrival at destination at the end of an interstate journey from the tax which may be laid in like fashion on the property itself.”

It was further said (P. 57):

“Here the tax is conditioned upon a local activity, delivery of goods within the State upon their purchase

for consumption. It is an activity which, apart from its effect on the commerce, is subject to the state taxing power."

*McGoldrick v. Berwind-White Coal Mining Company,*  
309 U. S. 33, 57, 84 L. Ed. 60 S. Ct. 388, 128 A. L. R.  
876.

The same local activity, delivery of goods within the state upon their purchase for consumption, exists in these cases; and, as was indicated by the opinion of this Court in that case, the local activity relating to the securing of the order has no bearing on the interstate commerce question.

(c) JURISDICTION OF THE SELLER IS NOT A QUESTION IN ISSUE.

The respondents answered and defended the suits brought against them to enforce the collection of the tax and therefore there is no question in issue in these suits as to jurisdiction.

**Conclusion.**

The petitioner submits that the opinion of the Supreme Court of Arkansas in these cases holding that the taxes could not be collected because it would be a burden on interstate commerce is contrary to the principles announced by this Court in the decisions referred to, and for this reason that this Honorable Court should issue its Writs of Certiorari to the Supreme Court of Arkansas so that the opinion of the court may be fully reviewed.

Respectfully,

LEFFEL GENTRY,  
Counsel for Petitioner,  
Boyle Bldg.,  
Little Rock, Arkansas.





## **APPENDIX**



## APPENDIX.

### **Act 154 of 1937—Arkansas Retail Sales Tax Law.**

An Act to provide for raising Revenue to Sustain the common schools, to provide free text books for the first eight grades thereof; to substitute homestead exemption taxes and to provide funds for library service and for the objects of the Welfare Commission by prescribing a levying specific taxes; to provide for the ascertainment, assessment, and collection thereof; to make provision for the carrying out of the purposes of this act; to prescribe penalties for a violation thereof; and to provide for the distribution and the disposition of the monies raised under the provision of this act.

**Be it Enacted by the General Assembly of the State of Arkansas:**

**Section 1. Title.** The title of this Act shall be, "The Arkansas Retail Sales Tax Law."

**Section 2. Purposes.** The purposes of this Act are to provide relief for Common Schools, to provide funds to buy free textbooks for the first eight grades thereof, to provide funds for circulating library service in connection with the public schools and funds to take the place of homestead exemptions, and to provide for the wards of the State who will receive support through the State Welfare Commission and for other worthy causes.

**Section 3. Definitions.** When used in this Act:

(a) The term "Person" includes any individual, firm, co-partnership, joint adventure, association, corporation, company, estate, trust or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) 1. The term "sale at retail" shall mean any transaction, transfer, exchange, or barter by which is transferred

for a consideration the ownership of any personal property, thing, commodity and/or substance, and/or the furnishing or selling for a consideration any of the substances and things hereinafter designated and defined, when such transfer, exchange or barter is made in the ordinary course of the transferror's business and is made to the transferee for the consumption or use or for any other purpose than for resale. The term "sale at retail" includes conditional sales, installment lease sales, and any other transactions when the title is retained as security for the purchase price, but is intended to be transferred later. "Sale at retail" shall not include sales of materials for further processing.

(b) 2. The term "sale at retail" shall not include an isolated or occasional sale of tangible personal property, substance, or thing by a person not engaged in such business.

(c) The term "business" shall include all activities or acts engaged in by any person, or caused to be engaged in by him, with the object of gain or benefit or advantage, either direct or indirect. The term "business" shall not be construed in this Act to include occasional and isolated sales or transactions by a person who does not hold himself as engaged in business.

(d) The term "gross proceeds" shall mean the amount received in money, credits, property, or any other money's worth in consideration of sales at retail within this State, without any deduction on account of the cost of the property sold, the cost of materials used, or any other expense whatsoever, nor shall any deduction be allowed for losseses. Credit or refunds for returned goods may be deducted. "Gross proceeds" shall not include the price received for labor or services used in installing, applying, remodeling, or repairing the property sold.

(e) The term "retailer" shall mean any person, persons, partnerships, firm, or corporation engaged in "sale at retail."

(f) The term "Commissioner" refers to the Commissioner of Revenues for the State of Arkansas.

(g) The term "Governmental agency" shall mean the State, any county, city, municipality, district or subdivision thereof.

(h) The use of the pronouns, "he, his, him or himself" shall be construed to refer not only to persons but to any, every and all partnerships, firms, and/or corporations coming within the purview of this Act.

(i) The test of a sale at retail is whether the sale is to a consumer for use and not for resale. Sales of goods which, as ingredients or constituents, go into and form a part of the tangible personal property for resale by the buyer are not within the Act; also sale of tangible personal property where other property is accepted as part of purchase price, such personal property so accepted to be resold, is not subject to tax; provided that in instances where public buildings are constructed the contractor so constructing said building shall be regarded as the consumer under the meaning of this Act.

**Section 4. The Tax.** There is hereby levied upon and shall be collected from all retail sales, as herein defined, a tax of two per cent (2%) of the gross proceeds derived from said sales.

The tax imposed by this section shall apply to:

(A) All sales at retail of tangible personal property.

(B) All retail sales at or by restaurants, cafes, cafeterias, hotels, dining cars, auctioneers, photostat and blueprint sales, funeral directors, and all other establishments of whatever nature or character selling for a consideration any property, thing, commodity, and/or substance.

(C) All sales of admission or admittance to athletic contests, theatres, both motion picture and stage performances, circuses, carnivals, dance hall and other places of amusement.

(D) All retail sales of electric power and light, natural and artificial gas, water, telephone use and messages and telegrams.

(E) Where there are adjoining cities or incorporated towns which are separated by a State line, the taxes and licenses to be paid by dealers in and on sales and services

in such adjoining city or incorporated towns on the Arkansas side of the State line shall be at the same rate as provided by law in such adjoining State, if any, not to exceed the rate provided in this Act.

(F) Every person, as defined in this Act, shall report to the Commissioner as a retail sale the use or consumption by him of anything on which the sales tax has not been paid under this Act which would have been levied had it been sold at retail in this State, and shall pay the sales tax thereon.

Section 5. Tax on credit merchants—cotton exempted. The tax imposed by this Act shall be in addition to any and all other taxes except as may herein be provided otherwise. Any person taxable under this Act, doing business wholly or partly on a credit basis may make application to the Commissioner for permission to prepare his returns on the basis of cash actually received. Such applications shall be granted by the Commissioner under such rules as he may prescribe. Any person making such application shall be taxable on all moneys collected during the period this Act is in force regardless of date of sale. Provided, however, nothing in this Act shall be construed as levying any taxes upon the gross proceeds received by any person whatsoever, from the sale of any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition. Provided, further that nothing in this Act shall be construed as levying any tax upon the gross proceeds received by the breeder, grower, or producer of any milk, poultry, livestock, or agricultural or horticultural, product or commodity, from the first or initial sale of same, and providing that nothing in this Act shall be construed as levying a tax on the following: All agricultural production produced by farmers, while the said production is in their possession and being offered for sale by them, the following items being named herein: cotton, cotton seed, corn, wheat, oats, hay, sorghum, rice, sago, grain, high-gear, strawberries, raspberries, peanuts, peas; furthermore, all horticultural products, namely: peaches, apples, pears, etc. Furthermore, all vegetables and eatables

produced on the farm by farmers. Furthermore, all livestock, namely: horses, mules, cattle, sheep, hogs, goats, etc. Furthermore, all poultry, namely, turkeys, chickens, ducks, and all other fowls so raised and the products of these fowls. Furthermore, all dairy products, namely: milk, in all of its forms and butter, and pecans, grapes, watermelons, cantaloupes, tomatoes, pumpkins. The naming of specific products herein as being exempt from the taxing provisions of this Act shall not be construed to exclude any other products coming within the meaning of general classes of products herein stated to be exempt.

**Section 6. Administration Cost.** The State Commissioner of revenues shall administer and enforce the assessment and collection of the taxes and penalties imposed by this Act. He may make and publish such rules and regulations, not inconsistent with this Act, as he may deem necessary in enforcing its provisions. Inasmuch as the tax herein provided will be inappreciable on single articles of small value, the tax on articles of larger value must be more or less approximate in order to equalize them. The Commissioner shall, therefore, prepare instructions to dealers by setting out to them suitable brackets of prices for applying the tax.

All forms necessary and proper for the enforcement of this Act shall be prescribed, printed and furnished by the Commissioner.

**Section 7. Appropriation.** The administration cost of this Act shall not exceed three per centum (3%) of the actual revenues collected.

**Section 8. Unlawful to Divulge Information.** It shall be unlawful for the Commissioner or any person having an administrative duty under this Act to divulge or to make known in any manner whatever, the business affairs, operations, or information obtained by an investigation of records and equipment of any person selling at retail, or the amount or source of income, profits, losses, expenditures, or any other particular thereof set forth or disclosed in any return. Provided, however, that the Governor may authorize examinations of such returns by other State or County

Officers, by tax officers of other states or the Federal Government.

**Section 9. Duty of Retailer to Collect and Account for Retail Sales Tax.** The tax hereby imposed shall be collected by the retailer from the consumer; and on or before the fifteenth day of each month after the effective date of this Act, and on or before the fifteenth day of each calendar month thereafter, the retailer shall make a return or returns to the Commissioner of Revenues upon forms furnished by said Commissioner, said return or returns to be made under oath or affirmation by the retailer. The Commissioner shall prepare and distribute to all those engaging in retail sales as herein defined all necessary blanks and forms on which each return or returns are to be made.

**Section 9-A. Remittance and Distribution.** The person making the monthly return herein provided shall pay to the Commissioner the amount of taxes herein levied at the time of making such return. Of the monies received by the Commissioner on account of taxes collected under this Act he shall pay into the State Treasury to a fund known as the "Textbook Fund" seven per cent (7%) during the fiscal year 1937-38, until \$350,000.00 shall have been paid in for said fiscal year; and thereafter seven per cent (7%) each fiscal year, until \$350,000.00 shall have been paid in each year with which to furnish free textbooks for the first eight grades in the Common Schools. He shall, beginning with the calendar year 1938, pay into a fund known as "Homestead Tax Exemption Fund" eight per cent (8%) of the monies collected during each fiscal year, until \$500,000.00 is paid into said fund each fiscal year hereafter, to be used to replace monies heretofore accruing to the different funds from homestead taxes, and to be distributed according to the statute on that subject. He shall pay into a fund known as the "Charitable Institutions Fund" ten per cent (10%) during each fiscal year, which fund is to be used for the purpose of maintaining the State Charitable Institutions. He shall pay into the State Treasury to the credit of the Welfare fund twenty-five (25%) per cent of the taxes collected under this Act and to the Common School fund fifty

(50%) per cent thereof; and any excess from the percentage allocated to the "Textbook Fund" and the "Homestead Exemption Fund" over the maximum sums up in this section for the benefit of said funds shall be divided as follows: Thirty-five per cent (35%) to the Welfare Fund and thirty-two and one-half (32½%) to a general property tax reduction fund, which fund is hereby created and seventeen and one-half per cent (17½%) to the common school fund, and fifteen per cent (15%) to counties to reimburse the general fund of counties in proportion to amounts allowed by the various county courts for the support of the County Agricultural Extension Service. Said monies are to be used only for the purposes for which collected and distributed. Provided that there may be appropriated from the said Common School Fund necessary funds to maintain a library service as provided by law. The monies paid into the Common School Fund shall be used only for the payment of warrants issued for the maintenance of schools and said library service, to be paid in order of registration as now provided by law.

Remittance of taxes imposed under this Act shall be made to the Commissioner by certified checks, cashier's checks, money orders or money.

**Section 10. Retailer Responsible for Tax.** Any retailer who shall neglect, fail or refuse to collect the tax herein provided upon any, every and all retail sales made by him, or his agents or employees shall pay the same himself, which said amount may be collected by distress warrant as provided in this Act. Provided any retailer of a service of a continuous nature required by law or regulation of a state agency having jurisdiction shall have the right to discontinue service upon refusal of consumer to pay the sales tax thereon and shall report such refusal to the commission, and the commission shall assess the tax due directly against the consumer and shall proceed to collect such tax due by direct distraint upon the property of the consumer, or otherwise.

**Section 11. Annual Return.** On or before February first of each year each retailer in addition to the monthly

return, shall make an annual return in the form required by the Commissioner. He shall transmit the return to the Commissioner together with his remittance covering the tax due to and including the remittance for December. Such return shall be made under oath or affirmation on the form prescribed. The Commissioner may for good cause extend the time for making the annual return on the application of any person subject to the tax to fit the fiscal year used in the ordinary course of business.

**Section 12. Penalties for Non-Payment.** If the Commissioner has reason to believe, and does believe, that any return is incorrect, after notice to the person making the return and a hearing, he shall correct such return according to his best judgment and information, which return so corrected by the Commissioner shall be *prima facie* correct. If the tax or amount found to be due by the Commissioner is greater than the amount of tax or amount due under the return as filed, the person making such return shall pay the additional tax or amount as computed by the Commissioner within ten (10) days after notice of the amount of such additional tax or amount is mailed to such person. If the payment is not made within such ten (10) days a penalty of ten per centum (10%) and interest at the rate of one per centum (1%) for each month or fraction of a month calculated from the date of the mailing of such notice, shall be added to the amount of such additional tax or amount due by said person.

**Section 13. Examine Books, Records, Etc.** The Commissioner or his authorized agents may examine any books, papers, records, or other data bearing upon the correctness of any return, or for the purpose of making a return where none has been made as required by this Act. If any person shall refuse to produce any book, record, paper, or other data pertaining to taxable sales when required to do so by the Commissioner or his authorized agent, such refusal shall be reported to the Attorney General or the Prosecuting Attorney who shall thereupon institute proceedings in the proper court of the county where such witness resides to compel obedience to any summons of the Commissioner or

his authorized agent; officers who serve summons or subpoenas, and witnesses attending shall receive like compensation as officers and witnesses in the justice of the peace courts; to be paid from the proper appropriation for the administration of this Act.

**Section 14. Keep Records.** Every person engaged in the business of selling at retail shall keep records and books of all such sales at retail, together with invoices, bills of lading, sales records, copies of bills of sales, and other pertinent papers and documents. Such books and records, and other papers and documents shall be subject to inspection by the Commissioner or his authorized agents and employees, at all times during business hours of the day.

Any person engaging or continuing in business as a retailer; and retailer and wholesaler or jobber shall keep his books so as to show separately the sales of each business. He shall consider as retail sales all sales made by him to any person other than a person purchasing for resale in the regular course of business or for processing. When his books are not so kept, all of his sales shall be regarded as retail sales.

**Section 15. Exemptions.** There are hereby specifically exempted from the taxes levied in this Act: (a) Retail sales which are prohibited from taxes by the Constitution or laws of the United States of America or by the Constitution of this State. (b) A portion of all retail sales on articles and/or commodities on which a State privilege tax or license is already collected. In this case the tax imposed in this Act shall be an amount equal to whatever is the excess above the already imposed privilege tax or license. (c) If the application of the tax provided in this Act on the retail sale of any article or commodity is found to be unconstitutional it is specifically understood that the validity of this Act shall be affected only as relates to said articles and will not affect the validity of the tax imposed on other articles in this Act.

**Section 16: Deduction.** A governmental agency may apply to the commissioner for refund of the amount of tax levied and paid upon sales to it for food-stuffs used for

free distribution to the poor and needy or to public penal and eleemosynary institutions.

Such refunds may be obtained only in the following manner and only under the following conditions:

(a) On forms furnished by the Commissioner the governmental agency shall report monthly the total amount expended for foodstuffs for free distribution to the poor and needy or to public penal and eleemosynary institutions.

(b) On said forms the governmental agency shall separately list the persons making the sales to it, or to its order, together with the date of sales, and the total amounts so expended by the governmental agency.

(c) The governmental agency must prove to the satisfaction of the Commissioner that the tax has been paid on such sales.

(d) All hospitals and sanatoria operated solely for the treatment and care of sick and injured persons shall report monthly, on forms prescribed by the Commissioner, verified by the Superintendent of said institution, the total amount of all purchases of any and all articles or food, used and employed in the operation of such hospital or institution, and may obtain the refund herein provided for and shall obtain the refund in the same manner as is provided for in this section for governmental agencies.

**Section 17. Advertising.** It shall be unlawful for any retailer to assume or absorb the tax, or to advertise or hold out to the public or to any customer directly or indirectly that the tax, or any part thereof imposed by this Act will be assumed or absorbed by the retailer.

**Section 18. Delinquent tax; Warrants; lien of tax.** If any tax or amount imposed by this Act, or any portion of such tax or amount, be not paid within thirty days, after due, the same shall be considered, delinquent and the amount payable thereafter shall be the amount due with ten per cent (10%) for the first month and an additional penalty of one per cent (1%) per month until paid or collected and the Commissioner may, as soon as practicable

thereafter, issue a warrant under his official seal, directed to the Sheriff of any county of the States, commanding him to levy upon and sell any real and personal property of the person owing the same, found within his county for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the Commissioner and to pay to him the money collected by virtue thereof within thirty days from the date of the warrant. The Sheriff shall, within five days after the receipt of the warrant, file with the Circuit Court Clerk of his county a copy thereof, and thereupon the Circuit Court Clerk shall enter in the column for judgment debtors, the name of the person mentioned in the warrant, and, in proper columns, the amount of the tax due or portion thereof and interest and penalties for which warrant is issued, and the date when such copy is filed and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in any real property, chattels, real or personal property of the person, against which such warrant is issued, and such lien shall be preferred and superior to all mortgages or other liens, filed or recorded subsequent to the date such tax liens become effective. Such sheriffs shall thereupon proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued against property upon the judgments of a court of Record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In case of failure of any sheriff to file copy of warrant with the Circuit Court Clerk as herein prescribed, a certified copy thereof filed by the State Commissioner of Revenues shall operate to the same effect as if same had been filed by the Sheriff.

Section 19. Action. (a) A right of action is hereby created to afford a remedy at law for any person aggrieved by the provisions of this Act; and in case of any such person resisting the payment of any amount found due, or the enforcement of any provision of such laws in relation thereto, such person shall pay the amount found due by the Commissioner and shall give the Commissioner notice, at

the time, of his intention to file suit for the recovery of the same; and upon receipt of such notice, the amount so paid shall be segregated and held by the Commissioner, for a period of thirty (30) days; and if suit be filed within such time for the recovery of such amount, such funds so segregated shall be further held, pending the outcome of such suit. If the person prevails, the Commisioner shall refund the amount to the claimant.

(b) This Section shall afford a legal remedy and right of action in any state or Federal Court having jurisdiction of the parties and subject matter, for a full and complete adjudication of any and all questions arising in the enforcement of this Act, as to the legality of any tax accrued or accruing or the method of enforcement thereof. In such actions, service of process upon the Commissioner shall be sufficient service and he shall be the sole, necessary, and proper party defendant in any such suit.

(c) This Section shall be construed to provide a legal remedy in the State or Federal Courts, by action at law, in case such taxes are claimed to be an unlawful burden upon interstate commerce, or the collection thereof, in violation of any Act of Congress or the United States Constitution, or in any case where jurisdiction is vested in any of the courts of the United States; provided that upon request of a person and upon proper showing by such person that the principle of law involved in and additional assessment is already pending before the courts for judicial determination, the said person, upon agreement to abide by the decision of the courts, may pay the additional assessment under protest, but need not file an additional suit. In such cases the tax so paid under protest shall be segregated and held by the Commissioner until the question of law involved has been determined by the Courts and shall then be disposed of as therein provided.

**Section 20. Tax on Sales for Use Outside of State.** Separate articles of merchandise, commodity or personal property sold at retail in this State for use outside of this State, at or for a price of \$200.00 or more, shall bear the rate of sales tax of the State where the same is to be taken and is

taken and used; which said tax shall be collected by the retailer at the time of said sale or sales. The wilful purchase or sale of an article for use outside of the State for the benefit of getting a lower-rate of tax than herein designated shall be unlawful and punishable as herein provided.

**Section 20-A.** The sales tax on automobiles shall be paid to the Commissioner of Revenues instead of being collected by the Dealer and the Commissioner of Revenues shall be required by this law in issuing auto license for new cars to require a payment of two per cent (2%) as sales tax before issuing said license.

**Section 20-B.** The Commissioner of Revenues is hereby authorized and empowered to install a system of tax collection under this Act, based on the token system; and he is further authorized and empowered to secure suitable tokens, and to promulgate such rules and regulations as are necessary to a proper enforcement hereof.

**Section 21. Penalty for Violation.** The violation of any provision of this Act shall be a misdemeanor and punishable by a fine not exceeding one thousand (\$1,000.00) Dollars, or by imprisonment not exceeding one year in the county jail, or both at the discretion of the court. Each day of violation shall constitute a separate offense.

**Section 22. Provisions of Act Severable.** The provisions of the Act are severable, and if any part or provision hereof shall be held void, the decision of the court shall not affect or impair any of the remaining parts or provisions of the Act.

**Section 23. Repealing Clause.** All Acts and parts of Acts in conflict herewith are hereby repealed; and this Act shall repeal Act 233 of 1935 known as the "Emergency Sales Tax Act."

**Section 24.** This Act will expire by limitation July 1st, 1939.

**Section 25. Emergency Clause.** Whereas, the people of the State of Arkansas, by their votes, have adopted the policy of furnishing free textbooks to public school pupils

in the first eight grades, calling upon the Legislature to provide funds therefor; and Whereas, it is necessary to provide funds therefor and make certain their availability at an early date so that a set-up may be established, texts selected and purchased, if the declared will of the people is carried out and textbooks furnished to said pupils by the summer and fall sessions of the public schools; and whereas, delay and uncertainty would nullify the declared will of the people; an emergency therefore exists for this Act to become effective at an early date.

And, Whereas, the people by their votes have adopted the policy of exempting homesteads from certain taxes, if and when the Legislature shall provide funds to substitute the loss of various revenue funds affected; and whereas, it is the will of the people that homesteads be exempted from such taxes, therefore, in order that said exemptions may be effected, it is necessary to provide funds to substitute the same and make the same certain and effective at an early date, which presents an emergency for this Act to go into effect earlier than it would otherwise.

And, Whereas, the Legislature of 1935 passed an emergency sales tax for the aid of the common schools and the public welfare, which will expire by limitation on July 1, 1937; and whereas, if said Act should expire before this Act shall take effect, it would be hazardous and ruinous to the public schools and to the public welfare funds, and whereas, it is absolutely necessary for the Sales Tax Law to be continued without interruption if the Welfare Department of the State is to function and needy persons be cared for, and the State receive from the Federal Government funds to aid in taking care of the needy people of the State, all of which presents an emergency for this Act to go into effect prior to the expiration of the Sales Tax Act of 1935, and at an early date, so that said aid may continue and the State perform its necessary functions in the support of the common schools and the public welfare.

THEREFORE, an emergency exists and is declared, and this Act being necessary for the public peace, health and safety, shall be in force and full effect and operation from and after its passage.

**Act No. 364 of 1939.**

Be it Enacted by the General Assembly of the State of Arkansas:

Section 1. That Section 24 of Act No. 154 of the Acts of the General Assembly of the State of Arkansas for 1937, approved February 26, 1937, be and the same is hereby repealed.

Section 2. That said Act now furnishes funds essential for education, relief and general welfare of the people of the State of Arkansas, it is imperative that said law remain in effect, an emergency is hereby declared and this Act being necessary for the public peace, health and safety, shall be in full force and effect from and after its passage.

Approved: March 16, 1939.

Z. M. McCARROLL,  
Commissioner of Revenues.

**Supplemental Regulation.**

**ARKANSAS RETAIL SALES TAX LAW. ACT 154 OF 1937, AS AMENDED BY ACT 364 OF 1939**

**Article 16**

*Sales in Interstate Commerce*

The Department of Revenues reserves the right to pass upon and determine each question regarding interstate commerce. If a ruling is desired as to whether or not the gross receipts of any given transaction are exempt under the Arkansas Sales Tax Law the Department will make such ruling, provided all of the facts surrounding such transactions are submitted for consideration.

*Sales of Property Originating in the State of Arkansas*

A. Where tangible personal property is located within the State at the time of sale and pursuant to and as a part of the sale does not leave the State the sale is within the Arkansas Retail Sales Tax Law, irrespective of where

the parties to the contract to sell are located, or the place where the contract was made or accepted or the purchase price paid. It is immaterial that the purchaser may, subsequent to the sale, transport the property out of this State or use it in interstate commerce.

B. The tax does not extend to sales where the seller makes physical delivery of the goods sold to the consumer at a point outside this State, when such goods are not to be returned to a point within this State. The tax does not apply to sales where the vendor by carrier or by mail delivers the goods sold from a point in this State to a point outside this State on order of buyer.

In order to establish an exemption of the proceeds of such sales the seller will be required to retain for his records, and available for inspection, waybills, bills of lading, orders and other data as evidence of such transactions. If the vendee is a carrier, delivery to vendee in this State will constitute a taxable sale in the State, irrespective of the nature of the bills of lading or other shipping data.

#### *Sales of Property Originating in Other States*

When tangible personal property is purchased for use or consumption in this State and (1) the seller engages in any business activity in this State, and (2) delivery is made in this State, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this State and shipped directly to the purchaser from the point of origin. (See McGoldrick *v.* Berwind-White Coal Company, Sup. Ct. of U. S. decided January 29, 1940, and companion cases; Graybar Electric Co. *v.* Curry, Alabama Sup. Ct., May 25, 1939, Aff'd. Sup. Ct. of U. S. Nov. 6, 1939.)

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State, or (2) that the contract is made before the property is brought into the State, or (3) that the contract of sale

purports to require transfer of possession of such property outside the State of Arkansas.

Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the buyer within this State, or (2) when the tangible personal property is placed in the mails directed to the buyer in this State or placed on board a carrier (FOB or otherwise) and directed to the buyer in this state.

Engaging in business in this state may include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the state under the authority of the seller or its subsidiary irrespective of whether such place of business, agent, salesman or solicitor is located in this state permanently or temporarily or whether such seller or subsidiary is qualified to do business in this State.

Sales by a jobber of materials ordered from an independent out-of-state manufacturer with delivery directly from the out-of-state manufacturer to the purchaser is a retail sale within the meaning of the Act. (*Hollis & Company v. McCarroll*.)

Sales consummated as above stated are taxable whether the same originate in another state or a foreign country.

Z. M. McCARROLL,

*Commissioner of Revenues for the State of Arkansas.*

September 24, 1940.



# ARKANSAS GROSS RECEIPTS TAX LAW

## ACT NO. 386 OF 1941

ACT TO PROVIDE FOR RAISING REVENUES TO SUSTAIN THE COMMON SCHOOLS; TO PROVIDE FREE TEXT BOOKS FOR THE FIRST EIGHT GRADES THEREOF; TO SUBSTITUTE HOMESTEAD EXEMPTION TAXES AND TO PROVIDE FUNDS FOR STATE CHARITABLE INSTITUTIONS, FOR LIBRARY SERVICES AND FOR THE OBJECTS OF THE WELFARE COMMISSION BY PRESCRIBING AND LEVYING SPECIFIC TAXES UPON GROSS RECEIPTS DERIVED FROM SALES; TO PROVIDE FOR THE ASCERTAINMENT, ASSESSMENT AND COLLECTION THEREOF; TO REQUIRE ALL TAXPAYERS UNDER THIS ACT TO SECURE PERMITS FROM THE COMMISSIONER OF REVENUES; TO PROVIDE FOR HEARINGS FOR AGGRIEVED TAXPAYERS; TO MAKE PROVISION FOR THE CARRYING OUT OF THE PURPOSES OF THIS ACT; TO PRESCRIBE PENALTIES FOR VIOLATION THEREOF; AND TO PROVIDE FOR THE DISTRIBUTION AND DISPOSITION OF THE MONIES RAISED UNDER THE PROVISIONS OF THIS ACT; AND FOR OTHER PURPOSES.

**Be It Enacted By the General Assembly of the State  
of Arkansas:**

**SECTION 1.** This Act shall be known and cited as "The Arkansas Gross Receipts Acts of 1941".

**Section 2. Definitions.** The following words and phrases shall, except where the context clearly indicates a different meaning, have, when used in this Act, the following meanings:

(a) **Person:** The term "person" includes any individual, company, partnership, joint venture, joint agreement, association (mutual or otherwise), corporation, estate, trust, business trust, receiver, or trustee appointed by any State or Federal Court or otherwise, syndicate, this State, any county, city, municipality, school district, or any other political subdivision of the State or group or combination acting as a unit, in the plural or singular number.

(b) **Commissioner:** The term "Commissioner" means and refers to the Commissioner of Revenues of the State of Arkansas, or any of his duly authorized agents.

(c) **Sale:** The term "sale" is hereby declared to mean the transfer of either the title or possession for a valuable consideration of tangible personal property, regardless of the manner, method, instrumentality, or device by which such transfer is accomplished. The term "sale" is also declared to include the exchange, barter, lease or rental of tangible personal property where such exchange, barter, lease or rental results or may result in either the transfer of the title or the possession. The term "sale" shall include also the sale, giving away, ex-

changing or other disposition of admission, dues or fees to clubs, to places of amusement, recreational, or athletic events, or for the privilege of having access to or the use of amusement, recreational, athletic or entertainment facilities. The term "sale" shall not include the furnishing or rendering of service or services, except as herein otherwise provided.

(d) Gross Receipts — Gross Proceeds: The term "gross receipts" or "gross proceeds" means the total amount of consideration for the sale of tangible personal property and such services as are herein specifically provided for, whether the consideration is in money or otherwise, without any deduction therefrom on account of the cost of the property sold, labor service performed, interest paid, losses or any expenses whatsoever.

The term "gross proceeds" or "gross receipts" shall include the value of any goods, wares, merchandise, or property withdrawn or used from the established business or from the stock in trade of the established reserves for consumption or use in such businesses or by any other person.

(e) Taxpayer: The term "taxpayer" means any person liable to remit a tax hereunder or to make a report for the purpose of claiming any exemption from payment of taxes levied by this Act.

(f) Established Business: The term "established business" means any business operated or conducted by any person in a continuous manner for any length of time from an established place or in an established manner.

(g) Seller: The term "seller" shall mean and

include every person making a sale in an established business as herein defined.

(h) Tax Period—Taxable Period: The term "tax period" or "taxable period" means either the calendar period or the taxpayer's fiscal period where a taxpayer has obtained a permit from the Commissioner of Revenues or from any of his duly authorized agents to use a fiscal period in lieu of a calendar period.

(i) Consumer—User: The term "consumer" or "user" means the person to whom the taxable sale is made, or to whom taxable services are furnished. All contractors are deemed to be consumers or users of all tangible personal property including materials, supplies and equipment used or consumed by them in performing any contract and the sales of all such property to contractors are taxable sales within the meaning of this Act.

(j) These definitions of words provided in this Section are for the purposes if this Act only.

**Section 3. Two Per Cent Tax Levied.** There is hereby levied an excise tax of two (2%) per cent upon the gross proceeds or gross receipts derived from all sales to any person subsequent to the effective date of this Act, of the following:

(a) Tangible Personal Property.

(b) Natural or artificial gas, electricity, water, ice, steam, or any other utility or public service except transportation services.

(c) Service by telephone and telegraph companies to subscribers or users, including transmission of messages, whether local or long distance. This shall include all service and rental charges having any connection with transmission of any message.

(d) Printing of all kinds, types and characters, including the service of overprinting, and photography of all kinds.

(e) The sale of tickets or admissions to places of amusement, to athletic, entertainment, recreational events, or fees for the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities, including free or complimentary passes and tickets, admissions, dues or fees, such free or complimentary passes, tickets, dues or fees hereby being declared to have a value equivalent to the sale price of tickets, passes, admissions, fees or dues of like kind or character.

The tax levied by this Act in respect to the sale of new automobiles shall be paid by the user or consumer to the Commissioner of Revenues instead of being collected by the dealer and the Commissioner shall be required by this law in issuing automobile licenses for new cars to require payment of the two per cent tax levied hereby before issuing said license.

Sales of service and tangible personal property including materials, supplies and equipment made to contractors who use same in the performance of any contract are hereby declared to be sales to consumers or users and not sales for resale.

**Section 4. Exemption from Tax.** There is hereby specifically exempted from the tax imposed by this Act the following:

- (a) Gross receipts or gross proceeds derived from the sale of intoxicating beverages taxed as now or may hereafter be provided for by law; provided, however, that this exemption shall not be construed to alter or affect in any manner the tax imposed by Act 310 of the Acts of 1939 which provides for a consumers sales tax upon liquor, beer and wine.
- (b) Gross receipts or gross proceeds derived from the sales of cigarettes taxes as provided in the Cigarette Tax Acts.
- (c) The gross receipts or gross proceeds derived from the sale of tangible personal property or services by churches, except where such organization may be engaged in business for profit.
- (d) The gross receipts or gross proceeds derived from the sale of tangible personal property, or services by charitable organizations, except where such organizations may be engaged in business for profit.
- (e) Gross receipts or gross proceeds derived from the sale of food in public, common, high school or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit.
- (f) Gross receipts or gross proceeds derived from the sale of newspapers.

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(g) Gross receipts or gross proceeds derived from sales to the United States Government.

(h) Gross receipts or gross proceeds derived from the sale of gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State of Arkansas.

(i) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the State, provided that such sales within the State are made to persons to whom sales tax permits have been issued as provided in Section 12 of this Act.

Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling or preparing for sale, can be classified as having been sold for the purposes of resale or the subject matter or resale only in the event such goods, wares, merchandise, or property becomes a recognizable, integral part of the manufactured, compounded, processed, assembled or prepared products. Such sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this Act as being "for consumption or use".

(j) Gross proceeds derived from sales of advertising space in newspapers and periodicals and billboard advertising service.

(k) Gross receipts or gross proceeds derived from

gate admission fees at state, county or township fairs.

(l) Gross receipts or gross proceeds derived from sales for resale which the State is prohibited by the Constitution and Laws of the United States from taxing, or further taxing, or which the State is prohibited by the Constitution of the State from taxing or further taxing.

(m) Gross receipts or gross proceeds derived from isolated sales not made by an established business.

(n) Gross receipts or gross proceeds derived from the sale of any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition; gross receipts or gross proceeds derived from the sale of raw products from the farm, orchard, or garden, where such sale is made by the producer of such raw products directly to the consumer and user; gross receipts or gross proceeds derived from the sale of livestock, poultry, poultry products, and dairy products of producers owning not more than five cows; exemptions granted by this subdivision shall not apply when such articles are sold, even though by the producer thereof, at or from an "established business"; neither shall this exemption apply unless said articles are produced or grown within the State of Arkansas. Provided, however, nothing in this subsection shall be construed to mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned herein shall be taxable when

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the producer sells at an "established business" located on his farm commodities produced on the same farm. The provisions of this subsection are intended to exempt the sale by livestock producers of livestock sold at special livestock sales. The provisions of this subsection shall not be construed to exempt sales of dairy products by any other businesses. The provisions of this subsection shall not be construed to exempt sales by florists, nursery men and chicken hatcheries.

The naming of specific products herein as being exempt from the taxing provision of this Act shall not be construed to exclude any other products coming within the meaning of general classes or products herein stated to be exempt.

(o) Gross receipts or gross proceeds derived from the sale of foodstuffs to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy.

(p) Gross receipts or gross proceeds derived from the sale of any tangible personal property or services as herein specifically provided to any hospital or sanitorium operated for charitable and non-profit purposes; provided, however, that gross proceeds and gross receipts derived from the sale of materials used in the original construction or repair or further extension of such hospital or sanitorium shall not be exempt from this Act.

(q) Gross receipts or gross proceeds derived from the sale of secondhand and used tangible personal

property on which the tax levied hereby has once been paid, and where such property was traded in to and accepted by the seller as part of the purchase price of other tangible personal property.

(r) Unprocessed crude oil.

(s) Where there are adjoining cities or incorporated towns which are separated by a state line, the tax hereby levied upon gross receipts or gross proceeds derived from sales and services by taxpayers, in such adjoining cities or incorporated towns on the Arkansas side of the State line, shall be at the same rate as provided by law in such adjoining state, if any, not to exceed the rate provided in this Act.

**Section 5. Preparation and Filing of Returns and Remitting the Tax.** The tax levied hereunder shall be due and payable on the first day of each month, except as herein provided, by any person liable for the payment of any tax due under this Act; and for the purpose of ascertaining the amount of the tax payable under this Act, it shall be the duty of all taxpayers on or before the 15th day of August, 1941, to deliver to the Commissioner, upon forms prescribed and furnished by him, returns under oath, showing the gross receipts or gross proceeds derived from all sales taxable or nontaxable under this Act during the preceding calendar month, and thereafter like returns shall be prepared and delivered to said Commissioner by all such taxpayers on or before the 15th day of each month for the preceding calendar month. Such returns shall show

such further information as the Commissioner may require to enable him to compute correctly and collect the tax herein levied.

In addition to the information required on returns, the Commissioner may request and the taxpayer must furnish any information deemed necessary for a correct computation of the tax levied herein. Such taxpayer shall compute and remit to the Commissioner the required tax due for the preceding calendar month, the remittance or remittances of the tax to accompany the returns herein required. Such return and remittances by the taxpayer as above required shall not be construed to constitute an assessment of the tax. If not paid on or before the 15th of such month, the tax shall be delinquent from such date. However, when the total amount of tax for which such taxpayer is liable for any month does not exceed Five (\$5.00) Dollars, a quarterly report and remittance in lieu of a monthly report may be made on or before the 15th day of July, October, January and April of each year for the preceding three months' period.

**Section 6. Duty to Keep Adequate Records.** It shall be the duty of every taxpayer required to make a return and pay any tax under this Act to keep and preserve suitable records of the gross receipts or gross proceeds of sales taxable and nontaxable under this Act, including such books of account and such analyses of sales as may be necessary to determine the amount of the tax due hereunder and all invoices, credit memoranda, refund slips, and other records of goods, wares, merchandise, and oth-

er subjects of taxation under this Act as will substantiate and prove the accuracy of such returns. All such records shall remain in Arkansas and be preserved for a period of Three (3) years, and shall be open to examination at any time by the Commissioner. In the event that such records are kept outside of the State of Arkansas in the usual course of business they shall be produced within the State of Arkansas upon proper demand by the Commissioner within a period of fifteen (15) days after receipt of such demand. In the event the taxpayer fails to maintain or preserve proper records as described in this Section the Commissioner shall be empowered to arbitrarily assess, upon such information as is available to him, the amount of tax due by the taxpayer. The burden of proof of refuting such assessment as set up by the Commissioner shall be upon the taxpayer.

It shall also be the duty of every person who makes sales for resales to keep records of such sales which shall be subject to examination by the Commissioner of Revenues or by any of his duly authorized agents while engaged in checking or auditing the records of any person making such sales for resale. All such records of sales for resale shall remain in Arkansas and be preserved for a period of three (3) years, and shall be open to examination at any time by the Commissioner or by any of his duly authorized agents. In the absence of keeping such records the burden of proving that the sale was a sale for resale rather than a sale for consumption shall be upon such person.

#### Section 7. Taxpayer and Method of Collecting

**the Tax.** The tax levied by this Act shall be paid to the Commissioner by the seller of tangible personal property and by the seller or collector of admissions to places of amusement, recreational, or athletic events and by the seller of privileges of access to, or the use of amusement, entertainment, athletic, or recreational facilities, and by any other person furnishing any service subject to the provisions hereof.

Such taxes, penalty and interest shall at all times constitute a prior, superior and paramount claim as against the claims of unsecured creditors.

The seller, or person furnishing such taxable service, shall collect the tax levied hereby from the purchaser.

In order to make such collections convenient the Commissioner of Revenues may in his discretion issue tokens in the denominations of one-tenth (1/10) of one cent and five-tenths (5/10) of one cent, in such quantity as the Commissioner deems necessary. Tax tokens shall not be accepted by the State in payment of taxes due. Tax tokens shall be redeemed at face value by the Commissioner, at Little Rock, Arkansas, and at such other points as he may designate.

The Commissioner may, in the alternative, in his discretion set up by regulation a bracket system of collecting the tax due hereunder.

**Section 8. Alternative Basis for Tax Return.** The tax imposed by this Act shall be in addition to any or all taxes except as otherwise provided herein. Any person taxable under this Act doing

business wholly or partly on a credit basis may make application to the Commissioner of Revenues for permission to prepare his returns on the basis of cash actually received. Such application shall be granted by the Commissioner under such rules and regulations as he may prescribe. Any person making such application shall be taxable on all monies collected during the taxable period.

**Section 9. Determination of Tax; Excess Payment; Deficiency Assessments; Notices.**

(a) **Examination of return; determination of tax; deficiency assessments.** As soon as practicable after each return is filed the Commissioner shall examine it. If it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid with interest at 3 per cent per annum may be credited against a subsequent tax or such excess shall be refunded if requested by the taxpayer.

If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of one-half of 1 per cent per month from the time such tax was due shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to negligent or intentional disregard of this Act or of the authorized rules and regulations of the Commission,

but without intent to defraud, there shall be added as a penalty 10 per cent of the total amount of such deficiency, in addition to the interest above provided, which interest and penalty shall become due and payable after notice and hearing as hereinafter provided.

If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 50 per cent of such deficiency and, in such a case, the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as hereinafter provided, and an additional one per cent per month on the tax shall be added from the date such tax was due until paid.

No deficiency, interest or penalty shall be assessed for any month after the expiration of three (3) years from the date set for the filing of such monthly return.

(b) **Failure to make Return.** If any person fails to file a return, the Commissioner of Revenues or his duly authorized agents shall proceed to assess the tax against such person and shall notify him of the amount thereof. Such tax shall become due and payable together with 25 per cent of the tax as penalty after notice and hearing as hereinafter provided. In case of failure or refusal to file a remittance, or the filing of an uncollectible remittance, with any return required by this Act, within the time prescribed by this Act, 10 per cent of the tax shall be added as penalty; provided, that when

a return or collectible remittance is filed after such time and it is shown that the failure to file it was due to reasonable cause and not due to wilful neglect, no such addition shall be made to the tax. The amount so added shall be collected as part of the tax.

**Section 10. Right of Taxpayer to a Hearing.** If the Commissioner, after examining the return of any taxpayer or upon the failure of any taxpayer to file a return, determines that the taxpayer is liable to the State for any taxes specified under this Act, he shall give such taxpayer notice of his intention to collect such assessment by issuing a certificate of indebtedness as hereinafter provided, or by any other legal means. Such taxpayer may, if he so desires and duly notifies the Commissioner in writing within twenty (20) days after receipt of such notice of intention, demand a hearing on the question of the issuance of such certificate of indebtedness. Thereupon the Commissioner shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof. The taxpayer shall be entitled to appear before the Commissioner and be represented by counsel and present testimony and argument. After the hearing the Commissioner shall render his decision in writing and by order establish any deficiency or tax found by him to be due and payable. If any taxpayer is aggrieved by any decision of the Commissioner he shall be required to pay the amount of taxes, interest and/or penalties found due by the Commissioner and after the payment of such taxes, interest and/or penalties, shall be permitted to appeal within a period of

ty (30) days after such decision to the Chancery Court of Pulaski County, Arkansas, where the matter shall be tried de novo. An appeal shall also lie from the Pulaski Chancery Court to the Supreme Court of Arkansas as in other cases now provided by law.

In the event any taxpayer is found by such court or courts entitled to recover any sums paid pursuant to the orders of the Commissioner as hereinbefore provided, such sums shall be refunded to him from a fund to be created by the Commissioner out of monies collected under this Act, to be known as the "Special Gross Receipts Refund Account", to be maintained for such purposes, which account shall not exceed the sum of \$10,000.00

No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under this Act.

**Section 11. Authority to File Certificates of Indebtedness.** If the taxpayer fails to demand a hearing within the time allowed, after an assessment of the tax due the State and proper notice thereof as hereinbefore provided, or if the taxpayer shall fail to pay the tax assessed by the Commissioner after such a hearing and an order by the Commissioner establishing such tax, as hereinbefore provided, then the Commissioner may, as soon as practicable thereafter, issue to the Circuit Clerk of any county of the State, a certificate certifying that the person therein named is indebted to the State for the tax established by the Commissioner to be due. The Circuit Clerk shall immediately enter upon

the Circuit Court judgment docket the name of the delinquent taxpayer, the amount certified as being due, a short name of the tax, and the date of the entry upon the judgment docket. Such entry shall have the same force and effect as an entry on such judgment docket of a judgment rendered by the Circuit Court of such county, and shall constitute and be evidence of the state's lien upon the title to any interest in any real property of the taxpayer named in such certificate. The entry of such certificate as a judgment shall constitute, in addition to the force and effect above described, a lien also upon all personal property of the taxpayer named therein from the time of the entry of such certificates.

Such lien shall be in addition to any and all other liens existing in favor of the State to secure the payment of such unpaid tax, penalty, interest and costs, and such lien shall be paramount and superior to all other liens of whatsoever kind and character attaching to any of said property subsequent to the date of such entry upon such judgment docket.

On the entry of such certificate, the Circuit Clerk shall issue an execution directed to the Sheriff of the county, commanding him to levy upon and against all such real and personal property of the taxpayer, which execution shall be by the Clerk placed in the hands of the Sheriff for levying thereon, and the Commissioner shall thereby have all the remedies and may take all the proceedings for the collection of such tax which may be had or taken upon the recovery of a judgment at law. Such execution shall

be issued and be served or executed in the same manner as now provided for the issuance and service of executions upon judgments rendered by the Circuit Courts of this State.

The Circuit Clerks and the Sheriffs shall be entitled to receive the same fees now provided for by law in such matters. Such fees shall be collected from the taxpayer by the Sheriff, in addition to the tax, penalties and interest included in such certificate of indebtedness; provided, however, that in the event such Sheriff is unable, after diligent effort, to effect collection of such tax, interest, penalties and costs, the Commissioner shall be empowered and authorized to pay such fees as are properly shown to be due, to such Clerk and Sheriff out of the "Special Gross Receipts Refund Account" provided for in Section 10 of this Act.

In addition to the method of collections herein provided, the Commissioner of Revenues, with the approval of the Governor, shall be authorized and empowered to employ an attorney or attorneys for the purpose of collecting taxes delinquent under this Act or under any other Sales Tax Act.

Nothing in this Act shall preclude the Commissioner from resorting to any other legal means of collecting such taxes as may now be provided by law, and the issuance of a certificate of indebtedness, the entry thereof by such Clerk and the levy of execution, as provided herein, shall not constitute an election of remedies in respect to the collection of such tax.

Section 12. Permits. It shall be unlawful for any taxpayer to engage or transact business within this state unless a written permit or permits shall have been issued to him. Every such taxpayer desiring to engage in or conduct a business within this state shall file with the Commissioner of Revenues an application for a permit to conduct such business; setting forth such information as the Commissioner may require. The application shall be signed by the owner of the business as a natural person, or, in the case of a corporation, by a legally constituted officer thereof. Any taxpayer who engages in business, subject to the provisions of this Section without a permit or permits, or after a permit has been suspended, shall be subject to penalties as hereinafter provided.

A separate permit for each place of business to be operated, must be obtained but no charge therefor shall be made by the Commissioner. Upon filing of each application in proper form, the Commissioner shall grant and issue to each applicant a separate permit for each place of business within the State. A permit is not assignable and shall be held valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The permit shall at all times be conspicuously displayed at the place of business for which issued in a position where it can be easily seen. Said permit shall be in addition to all other permits now or hereafter required by the Statutes of the State of Arkansas.

Any taxpayer operating under a permit as per-

vided in this Act shall, upon discontinuance of business by sale or otherwise, return such permit to the Commissioner for cancellation together with a remittance for any unpaid or accrued taxes. Failure to surrender a permit and pay any and all accrued taxes will be sufficient cause for the Commissioner to refuse a permit subsequently to such taxpayer to engage in or transact any other business in this state. In the case of a sale of any business, the tax shall be deemed to be due at the time of the sale of the fixtures and equipment incident to such business and shall constitute a lien against the stock and such fixtures and equipment in the hands of the purchaser thereof or any other third party until such tax is paid. The Commissioner shall not issue a permit to continue or conduct said business to the purchaser thereof until all tax claims due the State of Arkansas hereunder have been settled and paid.

All permits issued under the provisions of this act shall expire at the time of cessation of business at the place or location of the business within the state. Whenever a holder of a permit fails to comply with any provision of this Act, the Commissioner shall give notice to the taxpayer of an intention to revoke such permit. The taxpayer may, within ten (10) days after receipt of such notice of intention, apply to the Commissioner for a hearing in the same manner as provided for in Section 10 of this act. Such hearing shall be conducted at a time and place to be designated by the Commissioner and the taxpayer shall be entitled to introduce testimony and be represented by counsel, and the Commissioner shall determine at such hearing whether such

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taxpayer's permit should be revoked. The taxpayer shall be entitled, within thirty (30) days from the date of the order of the Commissioner revoking such permit, to appeal to the Chancery Court in his county where the action shall be tried de novo, and an appeal shall lie from such Chancery Court to the Supreme Court of Arkansas as in other cases provided by law.

In event the taxpayer fails to apply for a hearing within ten (10) days after receipt of such notice of intention, the Commissioner may revoke such permit. Any said permit may be renewed upon the filing of proper returns and the payment of all taxes due under this Act and/or removal of any other cause or causes of revocation or suspension.

**Section 13. Cash Deposit or Bond Required.** All persons doing a retail business in this State, which business is subject to the provisions of this Act, who do not have a permanent business domicile in this state, shall make a sufficient cash deposit or sufficient bond with the Commissioner to cover their annual sales tax, before doing business in this state or before receiving a permit to do business in this State as provided in Section 12 of this Act.

**Section 14. Discount Allowed Taxpayer for Prompt Payment.** At the time of transmitting the returns required under this Act, to the Commissioner, the taxpayer shall remit therewith to the Commissioner except as hereinafter provided, ninety-eight (98%) per centum of the tax due under the applicable provisions of this Act, and failure to remit such tax at the time of filing the return shall

cause said tax to become delinquent; provided, however, in the event the payment of any tax due under the applicable provisions of this Act becomes delinquent for a period of five days the taxpayer forfeits his claim to the two (2%) per centum discount and must remit to the Commissioner one hundred (100%) per centum of the amount of the tax due plus any penalty and interest due. This discount is allowed the seller or taxpayer to remunerate him for keeping Sales Tax records, filing reports, collecting the tax, and remitting it when due as required by this Act.

#### Section 15: Administration of Act.

- (a) The administration of this Act is vested in and shall be exercised by the Commissioner. The Commissioner shall promulgate rules and regulations, and prescribe forms for the proper enforcement of this Act.
- (b) Such rules, regulations and forms shall be cited, and issued under a systematic method of numbering, and copies made available to any person requesting same. A complete file of all such rules, regulations and forms shall be kept in the office of the Commissioner.

Section 16. Cost of Administration of Act. The administration costs of this Act shall not exceed three (3%) per centum of the actual revenues collected. If any funds appropriated for the administration of this Act shall remain in the hands of the Commissioner at the end of each fiscal year,

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that shall not have been actually used in the administration of this Act, then such funds shall be remitted by the Commissioner of Revenues to the State Treasurer for distribution in the same manner and for the same purposes provided for in Section 18 of this Act.

**Section 17. Purpose of Act.** The purposes of this Act are to provide relief of the Common Schools, to provide funds to buy free text books for the first eight grades thereof, to provide funds for the state charitable institutions, to provide funds for circulating library service in connection with the public schools and funds to take the place of homestead exemptions, and to provide for the wards of the State who will receive support through the State Welfare Commission, and for worthy causes.

**Section 18. Distribution of Funds Collected.** Of the monies received by the Commissioner on account of taxes collected under this Act, he shall pay into the State Treasury to a fund known as the Textbook Fund 7% during the fiscal year 1941-42 until \$360,000 shall have been paid in for said fiscal year, and thereafter 7% each fiscal year until \$360,000 shall have been paid in each year with which to furnish free textbooks for the first eight grades in the common schools, and library facilities for county libraries. He shall, beginning with the fiscal year beginning July 1, 1941, pay into a fund known as Homestead Tax Exemption Fund 4% of the monies collected during each fiscal year, until \$300,000 is paid in said fund each fiscal year hereafter, to be used to replace monies heretofore accruing to the different funds from homestead taxes, and to be

distributed according to the statute on that subject. He shall pay into a fund known as the Charitable Institutions Fund 10% during each fiscal year, which fund is to be used for the purpose of maintaining the State Charitable Institutions. He shall pay into the State Treasury to the credit of the Welfare fund 25% of the taxes collected under this Act and to the common school fund, 50% thereof. He shall pay to the State Treasury to be credited to the Teacher's Salary Fund, 1½ % of the taxes collected under the Act. He shall distribute 1½ % thereof to the University of Arkansas Fund, The Arkansas State Teachers College Fund, the four (4) Agricultural College Funds, and the Henderson Teachers College Fund on the prorata basis according to the millage levied for the support of respective funds. And he shall distribute 1% thereof to the Confederate Pension Fund. Any excess from the percentage allocated to the Textbook Fund and the Homestead Exemption Fund over the maximum set up in this section for the benefit of said funds shall be credited to the School Equalizing Fund. Said monies are to be used for the purposes for which collected and distributed. Provided that there may be appropriated from the textbook fund necessary funds to maintain a library service as provided by law. The monies paid into the Common School Fund shall be used only for the payment of warrants issued for the maintenance of schools and said library service, to be paid in order of registration as now provided by law. Remittance of taxes imposed under this Act shall be made to the Commissioner by certified checks, cashiers' checks, money order, or money. This Section shall not be con-

strued as repealing Section 15 of Act 162 of the Act of 1937.

**Section 19. Criminal Penalties.** Any taxpayer who continues to do business after the effective date of this Act without first obtaining permit provided for in Section 12 of this Act, or any taxpayer who shall continue to do business after the revocation or suspension of any such permit obtained pursuant to this Act, shall be guilty of a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$1,000.00, or by imprisonment in the county jail for not less than one month, nor more than six months, or both such fine and imprisonment; each day of doing business in violation of this Act shall constitute a separate offense, punishable accordingly.

**Section 20. Severance Clause.** If any section subsection, sentence, clause or phrase of this Act is held to be invalid, the decision shall not affect the validity or the meaning of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 21. Effective Date.** The provisions of this Act shall be effective as of July 1st, 1941.

**Section 22. Repeal of Conflicting Laws.** From and after July 1st, 1941, Act 154 of the Acts of the General Assembly of 1937 and Act 364 of the Acts

of the General Assembly of 1939 are hereby repealed; provided, however, any taxes which may have accrued under any Statute repealed hereby, but which have not yet been collected, by the Commissioner, shall be, when collected, apportioned in the same manner as taxes accruing and collected pursuant to the terms and provisions of this Act; and provided further, that the provisions of this Act relative to the collecting of taxes due hereunder shall be applicable to the collection of taxes which may have accrued prior to the effective date of this Act under the terms of any Act hereby repealed but not collected until after the effective date of this Act; and provided further that in the event of a judicial determination that this act is unconstitutional and void in its entirety, then and in such event, Act 154 of the Acts of the General Assembly of 1937 and Act 364 of the Acts of the General Assembly of 1939 shall be and continue in full force and effect.

APPROVED: 3-26-'41.



*Article 27 of Regulations Promulgated under Act 386 of  
the Acts of the General Assembly for the year 1941:*

**"STATE SALES and INTERSTATE SALES.** When tangible personal property is purchased by any person or business in this State for any purpose other than for resale and (1) the seller is a corporation qualified to do business in this State, or the seller carries on any business activity in this State, and (2) delivery is made in this State, such sale is intra-state and subject to the Gross Receipts Tax.

The term "business activity" for the purpose of this regulation means maintaining any office of any kind, warehouse or place of distribution, directly or indirectly by means of a subsidiary and/or agency, or the maintaining of any other place, whether business location or otherwise, from which orders are solicited or taken or at which place employees, agents and/or solicitors have their headquarters, or the mere solicitation of any business in this State or the servicing of any property by any employee, agent, or salesman, irrespective of whether a place of business is maintained, or if maintained, whether the place of business is permanent or temporary and irrespective of the length of time of engaging in such business activity as herein defined.

For the purpose of this regulation "delivery" is made in this State (1) when actual possession of the tangible personal property is transferred to the buyer within this State, or (2) when the tangible personal property is placed in the mails or on board a carrier (FOB or otherwise) and directed to the buyer in this State. In instances of sales under the conditions just recited it is immaterial that the goods were produced by the seller outside the State and shipped directly to the purchaser from the point of origin or that the contract of sale was closed by acceptance outside the State or that the contract was made before the property was brought into the State or that the buyer may subsequently transport the property out of the State for use or consumption.

When tangible personal property is sold by sellers in this State and the seller is obligated to deliver the property

to a point outside the State or to deliver it to a carrier or to the mail to be delivered to a point outside the State, the tax does not apply, such sales being sales in interstate commerce."

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